DEPARTMENT OF VETERANS AFFAIRS
Board of Veterans' Appeals
Washington DC 20001

In Reply Refer To: O1C2
[redacted]
DRIGHT, Preston J.

Preston J. Dright
619 Williams Street
Donaldsonville, LA 70346

MAY 0 6 2016

Dear Mr. Dright:

This letter responds to your Motion for Reconsideration of the Board of Veterans' Appeals (Board) decision of January 15, 2015. The Motion was received at the Board on March 7, 2016. I have been delegated the authority to rule on the Motion. *See* 38 C.F.R. § 20.102(a).

A Board decision is final unless the Board's Chairman, or his delegate, orders reconsideration to correct an obvious error in the record. 38 U.S.C. §§ 7103, 7104; 38 C.F.R. §§ 20.1000, 20.1001. Under 38 C.F.R. § 20.1000, the discretion of the Chairman or his delegate to grant reconsideration of an appellate decision is limited to the following grounds: (a) upon allegation of obvious error of fact or law; (b) upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or (c) upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant. You have alleged, in essence, that the Board decision contains an obvious error of fact or law under 38 C.F.R. § 20.1000(a).

The Chairman, or his delegate, will order reconsideration of an appellate decision upon the ground of "obvious error of fact or law" only when it is shown that the Board committed an error in its decision which, if corrected, would change the outcome of the appeal. Obvious (or clear and unmistakable) error is a very specific and rare kind of error. It is the kind of error of fact or law that, when called to the attention of adjudicators, compels the conclusion, with which reasonable minds could not differ, that the result would have been manifestly different but for the error. Mere allegations that previous adjudicators improperly weighed and evaluated the evidence are inadequate to meet the standard of "obvious error," as are broad allegations of "failure to follow the regulations" or "failure to give due process," or any other general, non-specific claim of "error." *See Fugo v. Brown*, 6 Vet. App. 40, 44 (1993). The alleged error(s) of fact or law must be described with some specificity and persuasive reasons must be given as to why the result would have been manifestly different but for the alleged error. *Id*. Moreover, reconsideration will not be granted on the basis of an allegation of factual error where there is a *plausible basis* in the record for the factual determinations in the Board decision at issue. This includes situations in which a Board decision reflects the reasonable

judgment of one or more of its Veterans Law Judges regarding the credibility, probative value, and weight of the evidence.

In the January 15, 2015, decision, the Board denied service connection for left lower extremity disability, right lower extremity disability, and lumbar spine disability. In your Motion for Reconsideration, you address your lower extremities only. Therefore, this ruling relates only to the bilateral lower extremity disabilities.

In your Motion, you state that the Board wrongfully concluded that your in-service bilateral leg pain had resolved while still in service. Specifically, you state that you attempted to seek treatment for your bilateral leg pain but that medical personnel were dismissive of your concerns. Therefore, you allege that your bilateral leg pain did not, in fact, resolve, and the Board's conclusion was made in error. In the decision, the Board pointed out that at service discharge, clinical evaluations of the vascular system, lower extremities, and neurologic system were normal and that you did not report bilateral leg pain at that time. The Report of Medical History that you completed at service discharge shows that you specifically denied "cramps in your legs." The fact that a medical professional reported normal findings pertaining to the vascular system, lower extremities, and neurologic system and that you denied having cramps in your legs at service discharge establishes a plausible basis in the record for the Board to conclude that the bilateral leg pain had resolved during service. You also feel that the July 2012 VA examination was not thorough because the examiner did not obtain x-rays or a magnetic resonance imaging, and therefore the medical conclusions reached were speculative. The examiner stated that he reviewed your VA treatment records, which records contain the diagnoses that the examiner addressed in his medical conclusions, and which diagnoses were based on testing that VA provided at prior VA medical appointments. In other words, it does not appear that the July 2012 VA examiner needed to conduct studies, when such studies had previously been completed at VA and which results were in your record. Therefore, the Board's conclusion that this examination report was adequate has a plausible basis in the record.

In reading through your motion, it appears that you disagree with how the Board weighed the evidence in denying the claims for service connection for left lower extremity and right lower extremity disabilities. As stated above, allegations that the Veterans Law Judge decided the issue incorrectly or improperly weighed the evidence do not meet the standard of "obvious error of fact or law" to warrant reconsideration of the decision. I have reviewed the facts of the case and the January 2015 Board decision and find that the decision contains findings of fact that are supported by plausible reasons and bases. For these reasons, your Motion for Reconsideration is denied.

If you would like to file a new claim, or a claim to reopen, you may submit that claim and any pertinent evidence to your local VA regional office.

I hope this information is helpful to you. Should you have any questions concerning this letter, you may contact the Board's Status Line at 1-800-923-8387.

Sincerely yours,

David C. Spickler
Deputy Vice Chairman
Board of Veterans' Appeals

Enclosure:
Your Appellate Rights Relating to Our Denial of Your Motion for Reconsideration.

cc: Disabled American Veterans
cc: VARO, Hartford, Connecticut

Department of Veterans Affairs

YOUR APPELLATE RIGHTS RELATING TO OUR DENIAL OF YOUR MOTION FOR RECONSIDERATION

The attached letter informs you that the Board of Veterans' Appeals (BVA or Board) has denied your motion for reconsideration of one or more of its decisions. If you are satisfied with the outcome, you do not need to do anything. However, if you are not satisfied with the outcome, you have the following options:

- Appeal the Board decision that you asked the Board to reconsider to the United States Court of Appeals for Veterans Claims (Court)
- Appeal the denial of your motion for reconsideration of that Board decision to the Court, but only under certain circumstances.

How long do I have to start my appeal of the Board decision to the Court? You have **120 days** from the date the Board decision was mailed to you (as shown on the first page of the decision) to file a Notice of Appeal with the Court. However, if you filed your motion for reconsideration within this 120-day period, you now have an additional 120 days from the date of mailing of the enclosed letter denying that motion within which to file a Notice of Appeal with the Court. *Rosler v. Derwinski*, 1 Vet. App. 241 (1991). If you filed more than one motion for reconsideration of that same Board decision, you have an additional 120 days from the date of mailing of the enclosed letter ***only if*** the Board received each of your motions within 120 days after it mailed its decision or its denial of the prior reconsideration motion. *Murillo v. Brown*, 10 Vet. App. 108 (1997). It is your responsibility to make sure that your appeal to the Court is filed on time. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: http://www.uscourts.cavc.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

Under what circumstances may I appeal the denial of my motion for reconsideration to the Court? You may appeal the Board's denial of your motion for reconsideration to the Court ***only*** if you filed a timely appeal of the Board decision that you asked the Board to reconsider. *Engelke v. Gober*, 10 Vet. App. 396 (1997).

Remember, you must file your Notice of Appeal within 120 days of the date of mailing of the enclosed letter. Send your Notice of Appeal to the address above for the Court.

Can someone represent me in my appeal to the Court? If you want someone to represent you before the Court, rather than before the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (855) 446-9678.

BOARD OF VETERANS' APPEALS
DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, DC 20420

IN THE APPEAL OF [redacted]
PRESTON J. DRIGHT

DOCKET NO. 14-24 631) DATE *January 15, 2015*
) *PAT*
)

On appeal from the
Department of Veterans Affairs Regional Office in Hartford, Connecticut

THE ISSUES

1. Entitlement to service connection for left lower extremity disability.

2. Entitlement to service connection for right lower extremity disability.

3. Entitlement to service connection for a disorder of the lumbar spine, to include as secondary to numbness of the lower extremities.

REPRESENTATION

Appellant represented by: Disabled American Veterans

WITNESS AT HEARING ON APPEAL

Appellant

IN THE APPEAL OF [redacted]
PRESTON J. DRIGHT

ATTORNEY FOR THE BOARD

J. Smith, Counsel

INTRODUCTION

The Veteran served on active duty from March 1952 to March 1956.

This matter comes before the Board of Veterans' Appeals (Board) on appeal from a July 2012 rating decision by the RO (Regional Office) in Hartford, Connecticut.

Medical evidence has been associated with the file subsequent to the June 2014 statement of the case (SOC). The Board has considered these records prior to Agency of Jurisdiction (AOJ) review. *See* Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law No. 112-154, 126 Stat. 1165 (amending 38 U.S.C. § 7105 to provide for an automatic waiver of initial AOJ review of evidence submitted to the AOJ or to the Board at the time of or subsequent to the submission of a substantive appeal filed on or after February 2, 2013, unless the claimant or claimant's representative requests in writing that the AOJ initially review such evidence).

The Board has considered documentation included in Virtual VA and VBMS.

This appeal has been advanced on the Board's docket pursuant to 38 C.F.R. § 20.900(c). 38 U.S.C.A. § 7107(a)(2) (West 2014).

FINDINGS OF FACT

1. The in-service leg pain was acute and resolved. The current peripheral artery disease and atherosclerosis of the left lower extremity did not manifest in service and are unrelated to service, and a neurologic disorder or vascular disorder was not manifest within one year of separation.

2. The in-service leg pain was acute and resolved. The current peripheral artery disease and atherosclerosis of the right lower extremity did not manifest in service and are unrelated to service, and a neurologic disorder or vascular disorder was not manifest within one year of separation.

3. A disorder of the lumbar spine did not manifest in service and is unrelated to service, and arthritis was not manifest within one year of separation.

4. The Veteran is not service-connected for any disability.

CONCLUSIONS OF LAW

1. Peripheral artery disease and atherosclerosis of the left lower extremity were not incurred in or aggravated by service, and an organic disease of the neurologic system or a vascular disorder may not be presumed to have been incurred therein. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309 (2014).

2. Peripheral artery disease and atherosclerosis of the right lower extremity were not incurred in or aggravated by service, and an organic disease of the neurologic system or a vascular disorder may not be presumed to have been incurred therein. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309 (2014).

3. A disorder of the lumbar spine was not incurred in or aggravated by service, and arthritis may not be presumed to have been incurred therein. 38 U.S.C.A. §§ 1101, 1110, 1112, 1113, 1131, 1137, 5107 (West 2014); 38 C.F.R. §§ 3.303, 3.304, 3.307, 3.309 (2014).

4. The claim for service connection for a lumbar spine disorder on a secondary basis lacks legal merit. 38 C.F.R. § 3.310 (2014).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

Veterans Claims Assistance Act of 2000 (VCAA)

The requirements of 38 U.S.C.A. §§ 5103 and 5103A have been met. There is no issue as to providing an appropriate application form or completeness of the application. By correspondence dated in October 2011, VA notified the Veteran of the information and evidence needed to substantiate and complete his claims, to include notice of what part of that evidence was to be provided by the claimant, and notice of what part VA would attempt to obtain. He was provided notice of how VA assigns disability ratings and effective dates. He was provided notice of how to establish a claim for secondary service connection. The claims were most recently readjudicated in a June 2014 SOC.

For all of these reasons, the Board concludes that the claims may be adjudicated without a remand for further notification.

VA has also satisfied its duty to assist. The claims folder contains VA medical records and private treatment records. A VA examination dated in July 2012 addressed the Veteran’s numbness of the lower extremities and lumbar spine disorder. The examinations considered the Veteran's history and set forth objective findings necessary for adjudication. The examination is adequate and further examination is not needed.

The Veteran also testified at a hearing before a VLJ. During the hearing, the VLJ discussed with the Veteran and elicited information with regard to his claims. The VLJ clarified the issues on appeal, clarified the theories of entitlement, explained the concept of service connection, identified an evidentiary deficit, and suggested the submission of additional evidence to support the Veteran's claims. The actions of the VLJ supplement the VCAA and comply with any related duties owed during a hearing. 38 C.F.R. § 3.103.

On review, there is no evidence of any VA error in notifying or assisting the Veteran that reasonably affects the fairness of this adjudication. *See* 38 C.F.R. § 3.159.

Analysis

Service connection will be granted if the evidence demonstrates that a current disability resulted from an injury or disease incurred in or aggravated by active military service. 38 U.S.C.A. §§ 1110, 1131; 38 C.F.R. § 3.303(a). Establishing service connection generally requires competent evidence of three things: (1) a current disability; (2) in-service incurrence or aggravation of a disease or injury; and (3) a causal relationship, *i.e.*, a nexus, between the claimed in-service disease or injury and the current disability. *Holton v. Shinseki*, 557 F.3d 1362, 1366 (Fed. Cir. 2009); 38 C.F.R. § 3.303(a).

For the showing of chronic disease in service, there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time. If chronicity in service is not established, a showing of continuity of symptoms after discharge is required to support the claim. 38 C.F.R. § 3.303(b); *Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013) (the theory of continuity of symptomatology can be used only in cases involving those conditions explicitly recognized as chronic as per 38 C.F.R. § 3.309(a)).

Service connection may also be granted for a disease first diagnosed after discharge when all of the evidence, including that pertinent to service, establishes that the disease was incurred in service. 38 C.F.R. § 3.303(d).

In addition, for Veterans who have served 90 days or more of active service during a war period or after December 31, 1946, certain chronic disabilities, including arthritis, a vascular disorder and organic diseases of the nervous system, are presumed to have been incurred in service if they manifested to a compensable degree within one year of separation from service. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.307(a), 3.309(a).

Service connection is also warranted for a disability which is proximately due to or the result of a service-connected disease or injury. 38 C.F.R. § 3.310(a). Such secondary service connection is also warranted for any increase in severity of a nonservice-connected disability that is proximately due to or the result of a service-connected disability. 38 C.F.R. § 3.310(b). This latter provision was added as part of an amendment intended conform VA regulations to *Allen v. Brown*, 7 Vet. App. 439 (1995), and also limited the circumstances in which VA would concede aggravation. *See* 71 Fed. Reg. 52,744 (Sept. 7, 2006) (codified at 38 C.F.R. § 3.310(b)).

Lower Extremities

The Veteran has current peripheral artery disease and atherosclerosis affecting the bilateral lower extremities. *See, e.g.*, July 2012 VA examination report.

The Board notes that the provisions of 38 U.S.C.A. § 1154(b) do not apply in this case, as it has not been claimed that the disabilities were incurred while engaging in combat.

The Veteran contends he was exposed to extreme and prolonged subzero temperatures during a flight from Greenland to Mississippi in approximately 1954. He contends that the heating system malfunctioned during the flight and that he had only blankets for warmth. He states he had extreme pain, numbness, and reduced mobility following the flight, and that he was ultimately treated with wintergreen and hot towels. He contends that he has suffered from problems in his legs ever since. *See, e.g.*, Hearing Transcript, p. 3-6.

Service personnel records show service in Greenland from June 1954 to October 1954. STRs, p. 19/43. A March 1955 service treatment record shows a complaint of pain in the legs. The Veteran was treated with wintergreen. STRs, p. 23/43. On separation from service, his examination was normal for pertinent systems and the Veteran voiced no complaints related to his legs. STRs, p.4-5 & 9-10/43. The vascular system, lower extremities, spine and neurologic system were normal.

On the issue of nexus, the file contains medical opinions and the Veteran's lay statements.

In October 2011, the Veteran sought treatment for bilateral leg pain in the ankles, calves, thighs, and hips, particularly on exertion. A VA treating provider found that given the failed treatment on Cilostazol, and the varying walking intervals at which the Veteran experienced the back pain, his symptoms were consistent with radiculopathy. The examiner opined that multifactorial DJD, spinal stenosis, lumbar disc disease, and spondylolisthesis were responsible for the pain. Virtual VA File, CAPRI Entry July 24, 2012, p. 3/17.

In May 2012, the Veteran reported bilateral leg pain of the upper calf, thigh, and buttocks. The VA treating provider found the pain was due to "lumbar osteoarthritis and vascular claudication from PAD [peripheral artery disease] likely aortoiliac and SFA [superficial femoral artery] given muscles affected." Virtual VA File, CAPRI Entry July 24, 2012, p. 13/17.

On VA examination in July 2012, the examiner opined that the Veteran's current symptomatology was less likely than not (less than 50 percent probability) incurred in or caused by the claimed in-service injury. The examiner found that the Veteran currently suffers from atherosclerosis and peripheral artery disease, both of which can cause the current symptoms, but neither of which were caused by cold exposure. While sensory nerve issues, which were not diagnosed on examination, could be explained by cold exposure, the Veteran's current blood flow deficits were explained by the presence of atherosclerosis. The examiner additionally found that the Veteran's spinal stenosis contributes to the symptomatology. The examiner accepted the Veteran's in-service cold exposure and noted the service treatment record documenting leg pain, but opined that his current symptoms were attributable to spinal stenosis and peripheral artery disease.

In August 2012, the Veteran reported a past hypothermal injury, consisting of 12 hours of below 40 degree temperatures in an airplane. He reported a loss of sensation and motor function. Current complaints consisted of leg pain on exertion. The Veteran underwent a non-invasive arterial blood flow study. The impression

was peripheral vascular disease. There was no significant occlusive disease. Virtual VA File, CAPRI Entry June 18, 2014, p. 13/15.

In November 2012, it was noted the Veteran had recently undergone ankle-brachial index testing. Given the results of this testing, the provider opined that the Veteran's bilateral leg pain was most likely due to lumbar osteoarthritis, rather than cold exposure. Virtual VA File, CAPRI Entry June 18, 2014, p. 43-44/54.

In June 2014, the Veteran reported pain in his legs since the in-service cold exposure. His medical history was documented. The examiner diagnosed, "lower extremity pain since 1954. [T]his is likely related to cold exposure in Greenland." VBMS Entry June 19, 2014.

Considering the pertinent evidence in light of the governing legal authority, the Board finds that the claim must be denied. The Veteran current peripheral artery disease, atherosclerosis, and neurological manifestations of a lumbar spine disorder. He suffered cold exposure in service and had leg pain. However, the in-service leg pain was acute and resolved, and his current disorders are unrelated to service or events therein.

In this regard, the Board finds the VA examination report of July 2012 to be adequate for the purposes of adjudication. *See Stefl v. Nicholson*, 21 Vet. App. 120, 123 (2007). The examiner based his conclusion on an examination of the claims file and the Veteran's diagnostic reports. He reviewed and accepted the Veteran's reported history and symptoms in rendering the opinion, as well as the service treatment and personnel records. He provided a rationale for the conclusions reached. His findings are consistent with the cited VA treatment notes of record.

By contrast, the positive opinion of the June 2014 provider is of less probative value because it does not contain a rationale, particularly in light of the remainder of the medical evidence to the contrary. *See Nieves-Rodriguez v. Peake*, 22 Vet. App. 295, 304 (2008) (finding most of the probative value of a medical opinion comes from its reasoning.)

The only other evidence to the contrary of the VA examination report and treatment notes is the lay evidence. Here, the Board finds that the Veteran's lay assertions are competent. Lay witnesses are competent to testify as to their observations, but this testimony must be weighed against the other evidence of record. *See Jandreau v. Nicholson*, 492 F.3d 1372, 1376-77 (Fed. Cir. 2007); *Buchanan v. Nicholson*, 451 F.3d 1331, 1336 (Fed. Cir. 2006). Further, the Board finds that the lay statements regarding the in-service cold exposure are credible. Consequently, the Board will weigh the lay statements against the medical evidence.

The VA examiner in this case was a medical professional who reviewed the claims file and considered the reported history including the Veteran's own lay assertions. The examiner, in providing the requested medical opinions, used his expertise in reviewing the facts of this case and determined that the current symptoms were not related to service. Other etiologies were identified. As the examiner explained the reasons for his conclusions based on an accurate characterization of the evidence, including the Veteran's lay statements, the opinion is entitled to substantial probative weight. *See Nieves-Rodriguez v. Peake*, 22 Vet. App. 295, 304 (2008). In weighing the VA examiner's opinions against those of the Veteran, the Board finds that the credibility and probative value of the specific and reasoned statement of the trained medical professionals outweighs that of the general lay assertions.

For these reasons, the Board finds that the current peripheral artery disease and atherosclerosis of the lower extremities are not due to disease or injury that was incurred in or aggravated by active service.

The Board additionally notes that while chronic disabilities, such as vascular disease, arteriosclerosis, arthritis and organic diseases of the nervous system, are presumed to have been incurred in service if manifest to a compensable degree within one year of discharge from active duty, the record here does not document such a disorder within one year of the Veteran's March 1956 discharge. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.307, 3.309. Accordingly, such presumptive service connection is not warranted.

To the extent the Veteran asserts having a continuity of symptomatology between the present conditions and in-service injury or disease, peripheral artery disease and atherosclerosis were not noted during service. Furthermore, characteristic manifestations of the disease process were not identified during service. Accordingly, § 3.303(b) is not applicable. *See also Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013)).

To the extent that he reports that he has had on-going manifestations since service, such report is inconsistent with the normal separation examination, his denial of pertinent pathology and his report for treatment purposes in October 2011 that he recovered function after warming. The report of on-going manifestations is not credible.

In reaching this decision, the Board notes that, as the preponderance of the evidence is against the Veteran's claims, the doctrine of reasonable doubt is not for application. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

Lumbar Spine Disorder

The Veteran has current spinal stenosis, degenerative joint disease, disc disease and spondylolisthesis. *See, e.g.*, July 2012 VA examination report.

The Board notes that the provisions of 38 U.S.C.A. § 1154(b) do not apply, as it has not been claimed that the disability was incurred while engaging in combat.

The Veteran contends that the numbness in his legs and feet have caused stress and pain in his back, resulting in his current back disorder. *See* Hearing Transcript, p. 7-8.

A review of service treatment records reveals no complaints, treatment, or documentation pertaining to the back. On separation from service, the Veteran's spine and musculoskeletal system was normal. He voiced no complaints in this regard. STRs, p.4-5 & 9-10/43.

On the issue of nexus, the file contains a VA examination report and the Veteran's lay statements.

On VA examination in July 2012, the examiner offered a negative nexus opinions on the issue of direct service connection, explaining, "spinal stenosis is a condition developed by time and natural aging progression not cold exposure."
The Board finds the report adequate for the purposes of adjudication. *See Stefl v. Nicholson*, 21 Vet. App. 120, 123 (2007). The examiner based his opinion on an examination of the claims file and the Veteran's diagnostic reports. He reviewed the Veteran's reported history and symptoms in rendering the opinions, as well as the service treatment records. He provided a rationale for the conclusion reached.

The only other evidence to the contrary of the VA examination report is the lay evidence. Here, the Board finds that the Veteran's lay assertions are competent. Lay witnesses are competent to testify as to their observations, but this testimony must be weighed against the other evidence of record. *See Jandreau v. Nicholson*, 492 F.3d 1372, 1376-77 (Fed. Cir. 2007); *Buchanan v. Nicholson*, 451 F.3d 1331, 1336 (Fed. Cir. 2006). Consequently, the Board will weigh the lay statements against the medical evidence.

The VA examiner in this case was a medical professional who reviewed the claims file and considered the reported history including the Veteran's own lay assertions. The examiner, in providing the requested medical opinions, used his expertise in reviewing the facts of this case and determined that the current spinal stenosis was not related to service, including to cold weather exposure. The etiology was aging. As the examiner explained the reasons for his conclusion based on an accurate characterization of the evidence, including the Veteran's lay statements, the opinion is entitled to substantial probative weight. *See Nieves-Rodriguez v. Peake*, 22 Vet. App. 295, 304 (2008). In weighing the VA examiner's opinions against those of the Veteran, the Board finds that the credibility and probative value of the specific and reasoned statement of the trained medical professionals outweighs that of the general lay assertions.

For these reasons, the Board finds that the current spinal pathology is not due to disease or injury that was incurred in or aggravated by active service.

To the extent that the Veteran claims entitlement to service connection for a lumbar spine disorder as secondary to residuals of cold injuries to the lower extremities, the claim must be denied as a matter of law because service connection has not been established for cold injury residuals, or for any other disability. *See Sabonis v. Brown*, 6 Vet. App. 426, 430 (1994).

The Board additionally notes that while chronic disabilities, such as arthritis, are presumed to have been incurred in service if manifest to a compensable degree within one year of discharge from active duty, the record here does not document arthritis of the lumbar spine within one year of the Veteran's March 1956 discharge. 38 U.S.C.A. §§ 1101, 1112, 1113, 1137; 38 C.F.R. §§ 3.307, 3.309. Accordingly, such presumptive service connection is not warranted.

To the extent the Veteran asserts having a continuity of symptomatology between the present conditions and in-service injury or disease, arthritis was not noted during service. Furthermore, characteristic manifestations of the disease process were not identified during service. Accordingly, § 3.303(b) is not applicable. *See also Walker v. Shinseki*, 708 F.3d 1331 (Fed. Cir. 2013)).

In reaching this decision, the Board notes that, as the preponderance of the evidence is against the Veteran's claims, the doctrine of reasonable doubt is not for application. *Gilbert v. Derwinski*, 1 Vet. App. 49 (1990).

ORDER

Service connection for left lower extremity disability is denied.

Service connection for right lower extremity disability is denied.

Service connection for a disorder of the lumbar spine is denied.

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H. N. SCHWARTZ
Veterans Law Judge, Board of Veterans' Appeals

YOUR RIGHTS TO APPEAL OUR DECISION

The attached decision by the Board of Veterans' Appeals (BVA or Board) is the final decision for all issues addressed in the "Order" section of the decision. The Board may also choose to remand an issue or issues to the local VA office for additional development. If the Board did this in your case, then a "Remand" section follows the "Order." However, you cannot appeal an issue remanded to the local VA office because a remand is not a final decision. *The advice below on how to appeal a claim applies only to issues that were allowed, denied, or dismissed in the "Order."*

If you are satisfied with the outcome of your appeal, you do not need to do anything. We will return your file to your local VA office to implement the BVA's decision. However, if you are not satisfied with the Board's decision on any or all of the issues allowed, denied, or dismissed, you have the following options, which are listed in no particular order of importance:

- Appeal to the United States Court of Appeals for Veterans Claims (Court)
- File with the Board a motion for reconsideration of this decision
- File with the Board a motion to vacate this decision
- File with the Board a motion for revision of this decision based on clear and unmistakable error.

Although it would not affect this BVA decision, you may choose to also:

- Reopen your claim at the local VA office by submitting new and material evidence.

There is *no* time limit for filing a motion for reconsideration, a motion to vacate, or a motion for revision based on clear and unmistakable error with the Board, or a claim to reopen at the local VA office. None of these things is mutually exclusive - you can do all five things at the same time if you wish. However, if you file a Notice of Appeal with the Court and a motion with the Board at the same time, this may delay your case because of jurisdictional conflicts. If you file a Notice of Appeal with the Court ***before*** you file a motion with the BVA, the BVA will not be able to consider your motion without the Court's permission.

How long do I have to start my appeal to the court? You have **120 days** from the date this decision was mailed to you (as shown on the first page of this decision) to file a Notice of Appeal with the Court. If you also want to file a motion for reconsideration or a motion to vacate, you will still have time to appeal to the court. *As long as you file your motion(s) with the Board within 120 days of the date this decision was mailed to you,* you will have another 120 days from the date the BVA decides the motion for reconsideration or the motion to vacate to appeal to the Court. You should know that even if you have a representative, as discussed below, *it is your responsibility to make sure that your appeal to the Court is filed on time*. Please note that the 120-day time limit to file a Notice of Appeal with the Court does not include a period of active duty. If your active military service materially affects your ability to file a Notice of Appeal (e.g., due to a combat deployment), you may also be entitled to an additional 90 days after active duty service terminates before the 120-day appeal period (or remainder of the appeal period) begins to run.

How do I appeal to the United States Court of Appeals for Veterans Claims? Send your Notice of Appeal to the Court at:

Clerk, U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, NW, Suite 900
Washington, DC 20004-2950

You can get information about the Notice of Appeal, the procedure for filing a Notice of Appeal, the filing fee (or a motion to waive the filing fee if payment would cause financial hardship), and other matters covered by the Court's rules directly from the Court. You can also get this information from the Court's website on the Internet at: http://www.uscourts.cavc.gov, and you can download forms directly from that website. The Court's facsimile number is (202) 501-5848.

To ensure full protection of your right of appeal to the Court, you must file your Notice of Appeal **with the Court**, not with the Board, or any other VA office.

How do I file a motion for reconsideration? You can file a motion asking the BVA to reconsider any part of this decision by writing a letter to the BVA clearly explaining why you believe that the BVA committed an obvious error of fact or law, or stating that new and material military service records have been discovered that apply to your appeal. It is important that such letter be as specific as possible. A general statement of dissatisfaction with the BVA decision or some other aspect of the VA claims adjudication process will not suffice. If the BVA has decided more than one issue, be sure to tell us which issue(s) you want reconsidered. Issues not clearly identified will not be considered. Send your letter to:

Director, Management, Planning and Analysis (014)
Board of Veterans' Appeals
810 Vermont Avenue, NW
Washington, DC 20420

Remember, the Board places no time limit on filing a motion for reconsideration, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to vacate? You can file a motion asking the BVA to vacate any part of this decision by writing a letter to the BVA stating why you believe you were denied due process of law during your appeal. *See* 38 C.F.R. 20.904. For example, you were denied your right to representation through action or inaction by VA personnel, you were not provided a Statement of the Case or Supplemental Statement of the Case, or you did not get a personal hearing that you requested. You can also file a motion to vacate any part of this decision on the basis that the Board allowed benefits based on false or fraudulent evidence. Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. Remember, the Board places no time limit on filing a motion to vacate, and you can do this at any time. However, if you also plan to appeal this decision to the Court, you must file your motion within 120 days from the date of this decision.

How do I file a motion to revise the Board's decision on the basis of clear and unmistakable error? You can file a motion asking that the Board revise this decision if you believe that the decision is based on "clear and unmistakable error" (CUE). Send this motion to the address above for the Director, Management, Planning and Analysis, at the Board. You should be careful when preparing such a motion because it must meet specific requirements, and the Board will not review a final decision on this basis more than once. You should carefully review the Board's Rules of Practice on CUE, 38 C.F.R. 20.1400 -- 20.1411, and *seek help from a qualified representative before filing such a motion.* See discussion on representation below. Remember, the Board places no time limit on filing a CUE review motion, and you can do this at any time.

How do I reopen my claim? You can ask your local VA office to reopen your claim by simply sending them a statement indicating that you want to reopen your claim. However, to be successful in reopening your claim, you must submit new and material evidence to that office. *See* 38 C.F.R. 3.156(a).

Can someone represent me in my appeal? Yes. You can always represent yourself in any claim before VA, including the BVA, but you can also appoint someone to represent you. An accredited representative of a recognized service organization may represent you free of charge. VA approves these organizations to help veterans, service members, and dependents prepare their claims and present them to VA. An accredited representative works for the service organization and knows how to prepare and present claims. You can find a listing of these organizations on the Internet at: http://www.va.gov/vso. You can also choose to be represented by a private attorney or by an "agent." (An agent is a person who is not a lawyer, but is specially accredited by VA.)

If you want someone to represent you before the Court, rather than before the VA, you can get information on how to do so at the Court's website at: http://www.uscourts.cavc.gov. The Court's website provides a state-by-state listing of persons admitted to practice before the Court who have indicated their availability to the represent appellants. You may also request this information by writing directly to the Court. Information about free representation through the Veterans Consortium Pro Bono Program is also available at the Court's website, or at: http://www.vetsprobono.org, mail@vetsprobono.org, or (888) 838-7727.

Do I have to pay an attorney or agent to represent me? An attorney or agent may charge a fee to represent you after a notice of disagreement has been filed with respect to your case, provided that the notice of disagreement was filed on or after June 20, 2007. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636. If the notice of disagreement was filed before June 20, 2007, an attorney or accredited agent may charge fees for services, but only after the Board first issues a final decision in the case, and only if the agent or attorney is hired within one year of the Board's decision. *See* 38 C.F.R. 14.636(c)(2).

The notice of disagreement limitation does not apply to fees charged, allowed, or paid for services provided with respect to proceedings before a court. VA cannot pay the fees of your attorney or agent, with the exception of payment of fees out of past-due benefits awarded to you on the basis of your claim when provided for in a fee agreement.

Fee for VA home and small business loan cases: An attorney or agent may charge you a reasonable fee for services involving a VA home loan or small business loan. *See* 38 U.S.C. 5904; 38 C.F.R. 14.636(d).

Filing of Fee Agreements: In all cases, a copy of any fee agreement between you and an attorney or accredited agent must be sent to the Secretary at the following address:

Office of the General Counsel (022D)
810 Vermont Avenue, NW
Washington, DC 20420

The Office of the General Counsel may decide, on its own, to review a fee agreement or expenses charged by your agent or attorney for reasonableness. You can also file a motion requesting such review to the address above for the Office of the General Counsel. *See* 38 C.F.R. 14.636(i); 14.637(d).